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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/664,645 | 09/19/2003 | Kate E. Nordland | 86012-34000-USPT | 5037 |
| 28763 | 7590 | 01/11/2006 | EXAMINER | |
| WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006 | | | SMALLEY, JAMES N | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3727 | |

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,645

Applicant(s)

NORDLAND, KATE E.

Examiner

James N. Smalley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2005.
2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-74 is/are pending in the application.
4a) Of the above claim(s) 70-74 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-69 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 29 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 29 recites the limitation "the hinge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20-25, 47-50 and 61-65 rejected under 35 U.S.C. 102(b) as being anticipated by Oakes et al. US 6,688,487.

Oakes '487 teaches a container (10) having a first (17) and second (25) outwardly projecting ledge, a first (16) and second (23) upwardly projecting wall, and a lid (11) with a domed cover.

The reference teaches in column 2, lines 56-57, that the container may be formed of foamed plastic.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 1-11, 13-15, 17-28, 30, 32-40, 42-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sellari et al. US 2005/0017007 in view of Oakes et al. US 6,688,487.

The reference teaches a container (14) having a first (28) and second (32) outwardly projecting ledge, a first (34) and second (26) upwardly projecting wall, and a lid (12) with a domed cover.

Examiner notes that while the hinge is removed for operation, the claims only limit the lid being pivotable about the base. The reference meets this limitation, because the lid is initially rotated about the hinge to a closed position after molding.

Sellari '007 does not teach the device being formed of foamed plastic but does teach in paragraph [0059] varying the material from which the container is formed.

Oakes '487 teaches it is known to form resilient snap closure containers of foamed plastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Sellari '007 of foamed plastic, as suggest by the reference and as taught by Oakes '487, motivated by the benefit of using an inexpensive and lightweight plastic material. Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 12, 16, 29, 31 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sellari et al. US 2005/0017007 in view of Oakes et al. US 6,688,487 as applied above to claims 1, 20 and 34 and further in view of Stevens et al. US 6,087,447.

Regarding claims 12 and 29, Sellari '007 does not teach indentations.

Oakes '487 teaches grip indentations (40) about the periphery of the lid.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lid of Sellari '007, providing the grips taught by Oakes '487, motivated by the benefit of enhancing a user's ability to grasp the lid. Because the depression are located about the entire circumference, at least one will inherently be disposed opposite the hinge.

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Regarding claims 16, 31 and 41, Sellari '007 as modified above, does not teach the foam comprising an alkenyl aromatic polymer.

Stevens '447 teaches forming foam with aromatic polymers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the container of Sellari '007 with the foam taught by Stevens '447, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
See attached PTO-892 for relevant references.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on M-Th 9-6:30, Alternate Fri 9-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jns


NATHAN J. NEWHOUSE
SUPERVISORY PATENT EXAMINER